

Federal and State Legislative Working Group Report to the NCAA Board of Governors October 23, 2019

Introduction

- Regarding NIL, change is appropriate, necessary, and in the best interest of student-athletes/the NCAA
- Expanding and enhancing NIL opportunities for student-athletes would be an appropriate extension of efforts to modernize NCAA rules consistent with its values and principles
- “We believe additional flexibility in this space can and must continue to **support the collegiate model in clear contrast to the professional sports model.**”
- Stakeholders interviewed by the working group included current and former student-athletes, faculty, presidents, conference commissioners, athletics administrators, coaches from DI, DII, and DIII, and “thought leaders and experts” from higher ed. and college sports communities
- Any changes made regarding NIL must both **enhance the student-athlete experience and support the collegiate model**

Recommendations

- To best serve student-athletes, the working group recommends that the BOG:
 - Authorize change in policy and bylaws to permit NIL benefits that consistent with NCAA values and principles, and consistent with legal precedent
 - **Reject approaches the make student-athletes employees** or use likeness as a substitution for compensation related to athletic participation and performance
 - Reaffirm the recruiting process. Changes to NIL rules should support the recruitment process and not lead to undue influence of a choice of college
 - Extend the timeframe of the working group to April 2020 to work with NCAA members on development and adoption of new NCAA legislation
 - Endorse the regulatory framework described in this report as appropriate guardrails for future conversations and possible NCAA legislation
 - Instruct NCAA leadership on engagement with state and federal lawmakers
- “Our recommendations **reject the idea of student-athletes as employees** and the use of their name, image, or likeness as a substitute currency in a ‘pay-for-play’ model.”
- Current state and federal legislative efforts conflict with NCAA rules and principles and fail to differentiate the intercollegiate experience from the professional experience
 - “These efforts also undermine the legal precedent that the U.S. Supreme Court and other courts have afforded the NCAA to regulate intercollegiate athletics at a national level.”
- Students should have the choice to select the professional model whenever they believe they are ready and choose to enter professional leagues
- There needs to be uniform rules that allow for equitable national competition and championships
 - State legislation fails to address the necessity

- Recommendation are made in explicit reliance on principles, guidance, and framework identified below, based on NCAA constitution and bylaws

Principles and Additional Guidance for the Decision-Making Process Related to Potential Name, Image and Likeness Modifications

- To maintain the difference between college and professional sports, NIL payments are not a substitute form of pay-for-play or an inducement to attend a particular college
- NIL regulation should be tailored, enforceable, and facilitate the principle of fair competition among schools in a division
 - Fair competition is important, but all divisions recognize variability will exist based on institutional mission, priorities, resources, and membership in particular divisions/subdivisions
- Student-athletes should be able to use their NIL similar to other college students who are not athletes, while recognizing the importance of interstate and uniform competition and recruiting → meaning some factors will result in student-athletes being treated differently
 - Considerations that may allow for flexibility in differentiates NIL among student-athletes and non-athletes:
 - NIL should be tethered to education
 - Determination and receipt of NIL benefits should be transparent, objective, and reasonable
 - NIL activity is regulated to allow first amendment expression that is without the expectation of compensation
 - Regulation of NIL should promote student-athlete well-being and educational achievement

Regulatory Framework Developed by the Working Group

- Framework must address current and future NIL opportunities
- When a student-athlete's work product/business is not related to athletics the athlete should be permitted to use their NIL to promote it
- When a student-athlete's work product/business is related to athletics, there should be sufficient controls to mitigate abuse to allow athlete to **"pursue opportunities in a manner consistent with the collegiate model"**
- Potential Issues to Consider:
 - Whether student-athletes are being compensated for the work product or for participation in athletics
 - Challenges determining where work product ends and NIL begins as the value driver
 - Inappropriate involvement of boosters that could impact enrollment decisions
- Example of Regulation to Consider:
 - Prior approval of NIL activity from athletics director, faculty athletics representative, or their designee to address pay-for-play concerns
 - Student-athletes may not miss class or required team activities to participate in NIL activities
 - Schools, employees, or boosters cannot be involved in the development or promotion of NIL opportunities
 - Institutional, conference, or NCAA brand marks cannot be used
 - Include "failsafe" provisions to address obvious malfeasance that is not clearly prohibited

- A student-athletes commercial NIL value may be derived largely through their participation in and association with college athletics
- Without mitigation, **these circumstance would be inconsistent with the collegiate model** because it would be substitute for pay-for-play
- Potential Issues to Consider:
 - Unregulated use of NIL could inappropriately impact recruiting
 - Student-athlete representative could inappropriately insert themselves into agreements to provide enrollment inducements for prospective athletes
- Examples of Regulation to Consider:
 - Agreements may not require or encourage enrollment in particular school(s)
 - Institutions and boosters may not be involved in arranging NIL activities
 - Institutional, conference, or NCAA brand marks cannot be used
 - Student-athletes may not miss class or required team activities to participate in NIL activities